

[REDACTED]
[REDACTED]
[REDACTED]
AUG 04 1993

CERTIFIED MAIL

DEAR
Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code and have determined that you do not qualify for tax exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The organization was formed under laws of the State of [REDACTED] on [REDACTED], to provide for the maintenance, preservation, administration and management of [REDACTED], a Condominium under the [REDACTED] Condominium Act, pursuant to the [REDACTED] Master Deed recorded or to be recorded with the Clerk of [REDACTED] County and to promote the health, safety, and welfare of the residents of [REDACTED], and for these additional purposes.

- a) To exercise all the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Master Deed and in the By-Laws attached thereto, as they both may be amended from time to time as therein provided.
- b) To fix, levy, collect and enforce payment by any lawful means of all charges and assessments pursuant to the terms of said Master Deed and the By-Laws of the Association; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all license taxes or governmental charges levied or imposed against the property of the Association.
- c) To engage the services of a professional corporate management agent and delegate to such agent any of the powers or duties granted to the Association of Unit Owners under the declaration or By-Laws other than the powers to engage or discharge such agent; the power to adopt, amend and repeal the provisions hereof, or of the Master Deed, By-Laws, or Rules or Regulations of the Condominium.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]	[REDACTED]				
Date	7/13/93	7-13-93	8/4/93				

- [REDACTED]
- d) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association.
 - e) To borrow money to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.
 - f) To have and to exercise any and all powers, rights and privileges which the corporation organized under the Non-Profit Corporation Laws of the State of [REDACTED] by law may now or hereafter have or exercise.

Membership is open to every person, firm, association, corporation or legal entity who is a record Owner of a condominium unit which is subject to [REDACTED] Master Deed.

Your income is derived from the collection of maintenance fees.

Your expenses are attributable to activities related to the organization's purpose.

Your activities include:

- (a) Management of common elements of the condominium
- (b) Billing and collection of maintenance fees
- (c) Exterminating
- (d) Cleaning and painting of hallways
- (e) Installations of intercoms
- (f) Installation of front doors
- (g) Repair of cornices
- (h) Replacement of hallway windows
- (i) Providing supplies for the building
- (j) Maintenance of record books, and
- (k) Meetings

Section 501(c)(4) of the Code provides for the recognition of civic leagues, social welfare organizations, or other organizations, not organized for profit, but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Federal Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated for the purpose of bringing about civic betterment and social improvements.

It has been held that where the primary economic benefit from an organization is limited to that organization's members the organization is not operated exclusively for the social welfare within the meaning of the statute. Consumer Farmer Milk Coop. v. Commissioner 186 F. 2d 68 (CA2; 1950), affirming 13 T.C. 150 (1949). New York State Association of Real Estate Boards Group Insurance Fund, 54 T.C. 1325, 1333 (1970).

In Commissioner v. Lake Forest, Inc., 305 F. 2d 814 (1962), the Court held that an organization was not organized exclusively for the promotion of social welfare when its activities partake largely of the nature of an economic and private cooperative undertaking. The Court also stated that an organization seeking tax exemption under section 501(c)(4) must bring itself within the terms of the statute granting exemption to claim the benefit it affords. The Court then explained that the organization's activities, while available to all citizens eligible for membership, were not benefits municipal or public in nature. Nor were they bestowed on the community as such.

Revenue Ruling 65-201, published Cumulative Bulletin 1965-2, on page 170, holds that a cooperative organization operating and maintaining a housing development and providing housing facilities and maintenance services on a cooperative basis does not qualify for tax exemption under section 501(c)(12) of the Code or any provision of the Code.

Revenue Ruling 74-17, published in Cumulative Bulletin 1974-1, on page 130, concerns an association formed by unit owners of condominium housing project which was operated to provide for the management, maintenance and care of the common areas of the project. Because the essential structure of a condominium association involves ownership in common by all unit owners of common areas and the maintenance and care of private property, it was held that the organization could not be recognized as tax exempt because the activities of the association constituted providing private benefit for the unit owners.

The rights, duties, and privileges of members of an association of unit owners in a condominium property derive from, and are established by, statutory and contractual provisions and are inextricably and compulsorily tied to the owner's acquisition and enjoyment of his property interests in the condominium.

Condominium type ownership by its very nature necessarily entails ownership in common by all unit owners of common areas or elements supportive to the individual units in a structural and/or functional sense. Thus, any maintenance or care of such common areas or elements constitutes private benefit to the individual members as opposed to promoting the common good and general welfare to the people of the community.

It is held that the direct economic benefit from your activities is for the benefit of your members as individuals and not for the direct benefit of the community as a whole. Accordingly, you are not primarily engaged in promoting the common good and general welfare of the people of the community.

[REDACTED]

Your organization fails to meet the operational test of section 501(c)(4). Your activity of administering to the condominium, establishing the means and methods of collecting assessments, and arranging for the management of the condominium are not activities described in section 501(c)(4) of the Code.

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code. In accordance with this determination you are required to file Federal income tax returns on Form 1120.

Your attention is called to section 528 of the Internal Revenue Code which was added by the Tax Reform Act of 1976. This section provides that, in certain circumstances, a non-exempt homeowners association may elect not to be taxed on its "exempt function income" which includes membership dues, fees or assessments from owners of real property. The election is made by filing Form 1120H. If you determine that your organization qualifies under section 528, you may find it beneficial to make this election.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, he or she will need to file a power of attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination on this matter.

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[REDACTED]
Acting District Director

Enclosure: Publication 892